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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Applications of WorldCom, Inc.
and MCI Communications Corp.
for Transfer of Control of
MCI Communications Corp.

GTE Service Corporation
Motion to Dismiss Applications
of WorldCom, Inc. and
MCI Communications Corp. for
Transfer of Control of
MCI Communications Corp.

To: The Commission

DOCKET FILE COPY ORIGINAL

CC Docket No. 97-211

MOTION FOR IMMEDIATE REVIEW OF NON-PUBLIC MATERIALS

Simply Internet, Inc. ("Simply Internet") hereby requests immediate review of any and all non-public materials relating to the above-referenced acquisition of MCI Communications Corp. by WorldCom, Inc. (jointly referred to herein as "WorldCom/MCI") which the Commission currently has in its possession, and which may come into its possession during the course of this proceeding, including any non-public information and documents obtained by the Commission from the Department of Justice ("DOJ") and Federal Trade Commission ("FTC") as submitted by WorldCom/MCI pursuant to the pre-merger review process under the Hart-Scott-Rodino amendment to the Clayton Act ("HSR"), 15 U.S.C. § 18a.

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Specifically, Simply Internet request that the Commission immediately permit its attorneys to review all non-public materials relating to the substantial and material questions in this proceeding regarding MCI and WorldCom's respective participation to date in the Internet industry, including but not limited to any and all materials regarding MCI and WorldCom's:

- (1) Internet backbone provider market share to ISPs and dedicated line customers;
- (2) Internet dial-up market share;
- (3) Market share with respect to Internet peering (interconnection) points;
- (4) Market share with respect to actual fiber facilities leased to all other Internet backbone providers or Internet service providers;
- (5) Method of calculation of market share in each market;
- (6) Pricing information/history for service provision in each market;
- (7) Peering negotiations and contracts;
- (8) Ownership and control of Internet Protocol ("IP") address blocks
- (9) Percentage of overall ISP and other dedicated line Internet backbone customers "borrowing" or "renting" the IP addresses.

As a party of record in this proceeding, Simply Internet is entitled to review these extremely pertinent materials pursuant to the Commission's precedent as established in its review of similar mergers, including *AT&T and Craig O. McCaw*¹ and *Bell Atlantic Corp. and Nynex Corp.*²

¹ See *Protective Order*, 9 FCC Rcd 2613 (1994).

² See *Applications of NYNEX Corp. and Bell Atlantic Corp. for Consent to Transfer Control*, File No. NSD-L-96-10, *Memorandum Report and Order*, CC 97-286 (rel. Aug. 14, 1997).

In *AT&T and Craig O. McCaw*, to make further information available after the comment cycle had closed, the Commission required the parties to the merger to submit their non-public HSR materials for review by the Commission and counsel for any party of record in the proceeding.³ In *Bell Atlantic Corp. and Nynex Corp.*, the Commission similarly made HSR materials available over objections of the parties to the merger who claimed that the Commission "already had sufficient information on which to make an informed decision."⁴ In both cases, the Commission allowed the parties of record to review the HSR documents because of the lack of information available in the public domain which could be used to address the substantial and material questions raised by the proposed mergers. Section 0.457(d)(1) of the Commission Rules also entitles parties of record to review this type of non-public information upon a "persuasive showing as to the reasons for inspection."

The situations in both *AT&T and McCaw* and *Bell Atlantic Corp. and Nynex Corp.* apply with equal force in this case. Without the ability to review these materials, Simply Internet will be limited to information available only in the public domain, which puts Simply Internet at a serious disadvantage with respect to its ability to analyze the full

³ *Id.*; See also *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1489 (D.C. Cir. 1995).

⁴ *Memorandum Opinion and Order*, at para. 28.

scope of the potentially substantial anti-competitive effects this merger will have on the Internet industry in general, the Internet backbone provider ("IBP") market, Internet service providers ("ISPs"), and end-user consumers as specified in the "Petition to Deny" and "Response" of Simply Internet filed in this proceeding.⁵ The information contained in the non-public documents surely goes to the heart of the substantial and material questions Simply Internet has raised in this proceeding.

WorldCom/MCI have failed to volunteer this information either in their Applications or during any stage of the established pleading cycle and have chosen only to skirt the issues. For example, instead of providing specific information regarding the total number of Internet backbone connections to ISPs each company controls to substantiate their respective market shares in the IBP market (which has been clearly defined by the Internet industry itself), WorldCom/MCI have refused to provide this information and have taken the position that they "vigorously disagree with the suggestion that there is a separate 'Internet backbone' market."⁶ Further, WorldCom/MCI have not even begun to address the extremely important and complex issues with

⁵ Notwithstanding whether the Commission grants Simply Internet's request for Additional Pleading Cycle, filed January 26, 1998, Simply Internet intends to utilize all evidence it uncovers from its review of these materials to further substantiate the significant issues which have been raised in this proceeding.

⁶ See Joint Reply of WorldCom, Inc. and MCI Communications Corporation to Petitions to Deny and Comments, filed January 26, 1998, at 69.

respect to their control over IP address blocks and the resulting tying of ISP and non-ISP business customers to their IBP services.⁷ Simply Internet's attorneys should be permitted to review the non-public materials in order to obtain all information that may be available concerning WorldCom/MCI's actual market position with respect to these and other significant issues. This procedure will assist the Commission in analyzing the substantial technical and legal questions with respect to MCI and WorldCom's participation in the overall Internet services market and substantial antitrust and public interest questions raised by this proposed merger.

⁷ See Exhibit A, WorldCom/MCI Ignore IP Addresses Issue in FCC Filing: Merger Might Result in Small ISPs Paying for Extra T-1, Internet Week, February 9, 1998 (discussing the importance of the IP address issue with respect to a competitive ISP market).

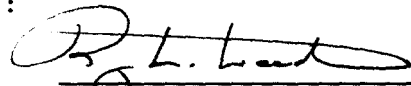
Conclusion

Simply Internet therefore respectfully requests that the Commission immediately provide Simply Internet's attorneys an opportunity to review the requested non-public materials in the record of this proceeding.

Respectfully submitted,

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By:



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ACSI Sues Regional ISP For Mailbombing

Bulk Email Can Become an Issue With Vendors

Hardware vendors using ISPs as their VAR channels should start paying attention to spam: ISPs hosting spam, and businesses producing it, can lose their high-speed backbone connections and backbone connectivity contracts if their partners oppose the content they are sending, an *Internet Week* investigation into one court case indicates.

American Communications Services Inc., [ACSI], a tier 1 backbone connectivity provider based in Annapolis Junction, Md., sued in Federal District court last week the relatively obscure **Dakota Communications**, a Tucson, Ariz.-based ISP, for

mailbombing its headquarters' intranet over the 1997 Thanksgiving holiday. ACSI is seeking \$75,000 in compensatory damages and an unspecified amount in punitive damages.

A mailbomb is a program that sends mail to the receiving computer in large quantities, causing it to shut down. ACSI's VP of regulatory affairs *Charles Kallenbach* tells *Internet Week* Dakota has been a home for spammers, individuals or businesses generating bulk email, for quite some time. Dakota denies the allegations, and in turn accuses ACSI of hosting spammers.

Although ACSI is suing Dakota specifically for damaging their server and backoffice systems, spam is the reason for the attack and the root of the problem the two companies are facing.

ACSI made an industry-wide announcement Nov. 17, 1997, that it will no longer provide connectivity to spammers, whom users detected sending their traffic over ACSI backbones. In response, the company says, it was mailbombed either by Dakota Communications itself, or by their client.

Dakota's President *John Ahrar* denies the allegations. Currently he is gathering evidence to counter-sue ACSI for defamation.

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WorldCom/MCI Ignore IP Addresses Issue in FCC Filing

Merger Might Result in Small ISPs Paying for Extra T1

The issue of IP addresses that come with the backbone connection when an ISP signs up for services lies at the center of the argument made by **Simply Internet**, the only non-backbone service provider that filed comments with the **Federal Communications Commission** against the **WorldCom [WCOM]/MCI [MCIC]** merger.

The case is expected to be resolved by the end of March, unless Simple Internet's request, filed Jan. 26, to schedule additional hearings is granted, which will delay the process for at least a month, according to their attorneys.

Privately held Simply Internet argues the merger potentially could put thousands of small ISPs out of busi-

ness, because a combined MCI/WorldCom is likely to raise prices for the services it offers.

A price hike would affect the entire ISP industry, since folding businesses will weaken demand for connectivity gear and will negatively impact the bottom lines of various vendors. The businesses that will fold should the WorldCom/MCI merger take a wrong turn are small ISPs. Also, large corporations purchasing connectivity from backbone providers might be hit with higher prices.

"Fortune 2000 companies like Motorola and Intel are in the same boat with this merger as ISPs, since they

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INSIDE

3 ISP PROFILE: Internet Operations Center Inc. has willingly undertaken the role of "automotive solutions provider," when it comes to Internet access in Detroit.

5 TECHNOLOGY: An increased number of vendors is actively exploring the ISPs' push into the customer service market.

7 RESEARCH: The market for non-PC devices with Internet access is still in its infancy, but vendors should take notice of the trend for possible expansion of the lines of equipment.

WorldCom/MCI

CONTINUED FROM PAGE 1

procure high-speed bandwidth from tier one carriers," says *Mitch Romm*, president and CEO of Washington, D.C.-based **Kivex Inc.**

Kivex is an ISP specializing in wiring office buildings with high speed Internet access solutions. Most ISPs refuse to think WorldCom and MCI will start charging more for backbone connectivity, given their record as good business partners. Some, however, are voicing some cautionary statements.

"WorldCom was talking about metered pricing for the backbone connectivity services, and they might very well implement that when they have such a large market share," says *Tony Howlett*, president and CEO of **InfoHighway**, a Houston-based ISP.

WorldCom and MCI downplayed the importance of the IP addresses issue for the ISPs, pointing out that the backbone provider switch, if one is needed, will not affect the majority of ISP customers. The point the ISPs are making, though, is that they will lose customers if they have to do the switch.

Also, the companies questioned the very existence of the backbone market.

"WorldCom and MCI vigorously disagree with the suggestions that there is a separate 'Internet backbone' market," the companies say in a joint statement filed with the FCC Jan. 26.

The companies elaborated that the "difference between an ISP 'backbone' provider and other ISPs is one of degree rather than clear demarcation."

ISPs disagreed with this position. "There are more than 3,000 ISPs buying upstream connectivity from a very limited number of companies," says Romm.

Legacy T1 Lines

This is what can happen after MCI and WorldCom merge, according to Simply Internet. If the combined company chooses to raise prices, Simply Internet argues, some ISPs will have to switch backbone providers. To change backbone providers, ISPs will

have to give back the IP addresses they got from those providers when they signed up, and get a set of new addresses from their new carriers.

This change will involve mostly dedicated line customers, and will not have as much effect on dial-up customers. However, it would be up to the ISP to persuade their customers the inconvenience of them changing the set-up codes on all their equipment is worth keeping their account with that ISP.

All ISPs *Internet Week* interviewed for this story said the IP code change is a headache that costs money (for the technical support people's work and new line activation fees) and causes customer churn (with subscribers switching to another ISP rather than dealing with the problems their current provider is having.)

The only alternative for small ISPs

"WorldCom and MCI vigorously disagree with the suggestions that there is a separate 'Internet backbone' market."

- WorldCom/MCI
Joint Statement to FCC

like Simply Internet appears to be continuing to buy connectivity from the carrier that originally was the backbone provider for the ISP.

EarthLink [ELNK], for example, which started out by buying connectivity from **Sprint** [FON] and AGIS, has since migrated to **MCI**, **WorldCom**, **BBN** (owned by **GTE**) and **PSINet**.

"We had to continue buying a legacy T1 line from Sprint, since changing IP addresses is such a headache," says *Steve Dougherty*, director of Internet operations at EarthLink.

Buying another T1 just to keep the addresses is an expensive or sometimes impossible option for some ISPs.

"Smaller ISPs may not be able to afford a second T1, and will have to stay with their initial provider," says Romm. (*Mitch Romm, Kivex, 301/215-6777, Tony Howlett, InfoHighway, 281/447-7025, Rudolf Geist, Wilkes, Artis, Hedrick and Lane (representing Simply Internet), 202/457-7345, Steve Dougherty, EarthLink, 818/296-5737*) ■

Concentric Buys InterNex

Seeking to enhance its Web hosting service, **Concentric** [CNCX] bought **InterNex Information Systems Inc.** last week, a closely held ISP providing hosting and dedicated access services, for \$15.5 million in cash.

Since both ISPs are leasing capacity from the same providers, **MCI** [MCIC] being one of them, combining their networks would be very easy and "theoretically can take about two hours," says *Jim Southworth*, Concentric's director of the advanced network services and technologies. Southworth also says Concentric will add InterNex's strong relationship with **Cisco** [CSCO] to the solid relationship the company has with **Bay Networks** [BAY].

As a result of this deal, Concentric will gain access to additional capacity of InterNex data centers in Santa Clara, San Francisco, Los Angeles, Chicago and Washington D.C., and additional hosting facilities in Stockholm, Tokyo and New York. InterNex's 1,000 business customers now will be supported by Concentric. (*Jim Southworth (Katie Green), Concentric, 408/342-2885*)

Newbridge Stock Falls

Newbridge Networks Corp. [NN], Canadian manufacturer of switching equipment, saw its stock fall to an all-time low last week, after the company reported lower than expected earnings of \$0.07 cents per share, against the analyst estimate of \$0.25 per share.

The company blamed the decline on the sequential decline for the time division multiplexing systems. Wall Street analysts, however, saw it differently, attributing the plunge to the **U S West-Intermedia** contract the company lost early in February.

Cisco Systems [CSCO] won a contract to put its BPX ATM switches in all **U S West** [USW] 21 POPs outside of the 14 state region where the company operated its data business before cooperation agreement with **Intermedia** [ICIX] was signed. (*IW 02.02.98*). Cisco's switches will be deployed instead of Newbridge's **MainStreet** 36170.

(*Jennifer Jones, U S West, 303/965-3706*)

CERTIFICATE OF SERVICE

I, Rudolph J. Geist, hereby certify that a copy of the foregoing "Motion for Immediate Review of Non-Public Materials" was served this 10th day of February 1998, by first-class, postage prepaid mail to the following:

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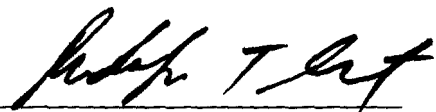
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